Supreme Court, U. S.
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in the

Supreme Court

of the

United States

CASE NO. 78-1401

CITY OF MIAMI,
a Florida municipal corporation,
Appellant,

vs.

ST. JOE PAPER COMPANY, a Florida corporation; SOUTHEAST PROPERTIES, INC., a Florida corporation; HUGH E. MATHESON, JR., individually; and SALLY S. DOMMERICH, formerly Sally S. Matheson, individually,
Appellees.

On Appeal from the Florida Supreme Court

REPLY TO MOTION TO DISMISS OR AFFIRM

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REPLY TO MOTION
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Appellee St. Joe Paper Co. ("St. Joe") has moved to dismiss or affirm. All other Appellees have joined in these motions.

Appellees necessarily concede that the subject Constitutional questions were timely and expressly raised and denied by all three levels of Florida courts. Appellees do not even deny that the questions presented are important: their only argument is that the City is incorrect on the merits of this appeal.

The federal questions presented by this appeal are substantial. Despite Appellant's plain demonstration of the Constitutional prohibitions of such a course, the Florida Supreme Court held the City divested of fee simple land ownership by Florida's Marketable Record Titles Act ("Florida's MRTA"). The Florida court held private interests to have acquired valid title to the City's vested property by virtue of the passage of thirty years from acceptance of a void, wild deed to property Appellees then actually knew was titled in the City.

REPLY TO RESTATEMENT OF THE FACTS

Appellees studiously ignore this basic fact: St. Joe did not own and had no valid claim to this property, and actually knew when it took its wild deed that the City in fact owned this property. St. Joe's arguments about "riparian rights and submerged lands appertaining thereto" were rejected as a matter of state law by the Florida Supreme Court. St. Joe's predecessors in putative title unlawfully filled the City's land and then purported to convey it to St. Joe. St. Joe's title search when it purchased necessarily revealed that it was being "offered" a tract which included City land. As the Florida Supreme Court held, St. Joe's deed was wild.[1]

St. Joe accuses the City of "misrepresenting" that the City had no notice of St. Joe's wild deed. Referring to its supposedly open "incidents of ownership," St. Joe argues that the City actually knew that St. Joe had stolen its land and therefore cannot be heard to demand constitutional notice.

[1] City of Miami v. St. Joe Paper Co., 364 So.2d 439, 445-448 (Fla. 1978).

The question of what facts charge a municipal corporation with actual notice of an adverse claim is not before this Court.[2] Florida's MRTA confers no notice. There were no facts before the Florida trial court except those alleged in the City's complaint: St. Joe had knowingly recorded a wild deed to the City's property in 1944; it then had sat back and hoped for the best. The trial court dismissed the complaint, holding that because that wild deed was recorded thirty-one years before this action, St. Joe held marketable title under Florida's MRTA.

The law in Florida is that a wild deed is a void instrument which confers no notice to the true owner.[3] The Florida Supreme Court did not purport to change this law (nor, without running afoul of the Federal Constitution, could it have).[4] The court did *not* hold that the City had notice or was charged with notice of St. Joe's wild deed. Instead, the court purported to respond to the lack of notice by saying that the City had notice of the passage of Florida's MRTA itself, and somehow, therefore, should have known to re-record its vested, fee simple title by January 10, 1974.

But Florida's MRTA on its face did not require every fee simple owner to re-record his deed every thirty years. A landowner has notice to re-record only if he has notice of a recorded instrument which could lawfully extinguish his ownership. The City had no adequate or valid notice of St. Joe's attempt to record a maverick deed, and therefore had no notice of a need to re-record.

Moreover, *even if* the City had had actual knowledge of the existence of St. Joe's wild deed (of which there is no evidence whatever on this record and

[2]St. Joe's thinly-disguised attempt to inject non-federal (and non-existent) issues such as estoppel and adverse possession are irrelevant to this appeal and are unsupported by the record. They were not considered by the courts below, and are contrary to the applicable law. See *Waterman v. Smith*, 94 So.2d 186 (Fla. 1957) (adverse possession will not lie against a municipality); *Wernle v. Bellemead Dev. Corp.*, 308 So.2d 97 (Fla. 1975) (acceptance of taxes cannot bar a city from contesting a void deed). *Cf. State v. Zimring*, 566 P.2d 725 (Hawaii 1977) (acceptance of taxes does not estop state to quiet title to accretion to the shoreline); *Beach Front Hotel Co. v. Sooy*, 197 Fed. 881 (3d Cir. 1912) (recorded plat showing shore line does not make estop grantee to claim his lands extend to high water mark). *See also Czaplicki v. The S.S. Hoegh Silvercloud*, 351 U.S. 525 (1956); *City of Miami Beach v. Smith*, 551 F.2d 1370 (5th Cir. 1977); *Natural Resources, Inc. v. Wineberg*, 349 F.2d 685 (9th Cir. 1965), *cert. denied*, 382 U.S. 1010.

[3]*Smith Bros. v. Williams*, 131 So. 335 (Fla. 1930).

[4]The Florida Supreme Court's decision does not hold or state that the City had notice of St. Joe's wild deed. The Court based its conclusion that Florida's MRTA validates a wild deed on its prior decision in *ITT Rayonier, Inc. v. Wadsworth*, 346 So.2d 1004 (Fla. 1977). In *ITT Rayonier* (decided during the pendency of this case), the court did say (for the first time in the history of Florida jurisprudence) that Florida's MRTA validates a wild deed, although in fact the deed in that case was not wild: a life tenant (*not* a stranger to the chain of title) purported to convey fee simple to herself and another as tenants in common. But the Court reasoned in *ITT Rayonier* that the statutory definition of "root of title" as "any title transaction *purporting* to create or transfer the estate claimed" (Fla. Stat. §712.01(2), emphasis added) embraced wild deeds. The decision in *ITT Rayonier* was *after* the City had been divested. St. Joe's representation at page 18 of its Motion that Florida courts had previously applied Florida's MRTA to wild deeds is incorrect.

which if it existed was certainly not conferred by Florida's MRTA), the City still did not have notice of a need to re-record. It was established Florida law, when the MRTA was enacted, when the City was divested, and when the City brought this suit, that a wild deed cannot be validated by a subsequent legislative act.[5]

The City did not have notice that Florida's MRTA could validate a wild deed. Even could the State *now* require landowners to take notice of wild deeds, there was no such requirement on January 10, 1974 (when, according to the Florida Supreme Court, the City was divested). The City therefore had no real opportunity to protect its interest. *See Brinkerhoff-Faris Trust & Savings Company v. Hill*, 281 U.S. 673 (1930).[6] *See also Memphis Light, Gas and Water Division v. Craft*, 98 S.Ct. 1554 (1978).

[5]*Smith Bros. v. Williams*, 131 So. 335. See also n. 4, supra.

[6]In *Brinkerhoff-Faris*, the plaintiff sought to enjoin an allegedly discriminatory tax assessment. State law at that time held that there was no administrative remedy. The trial court dismissed. The state supreme court held that there was an administrative remedy, but that the plaintiff in not seeking it was guilty of laches. This Court reversed, holding the plaintiff had been deprived of property with no real opportunity to be heard.

THE QUESTIONS ARE SUBSTANTIAL

Contract Clause

Appellees' motion ignores the impact of this Court's decisions in *Allied Structural Steel Co. v. Spannaus*, 98 S.Ct. 2716 (1978), and *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977). Appellees' reading of those two cases can only be seen as Appellees' suggestion that this Court recede from both decisions and remove Constitutional fetters from State legislatures. Obviously, this Court did not consider either case as a mere exercise in deciding a unique and unrepeatable situation. Had that been so, the Court presumably would have declined to hear either.

But this Court made clear in *Spannaus* and *United States Trust* that the Contract Clause is *not* a dead letter. The States may *not* impair an existing contractual right merely because some State interest would be served. To be upheld, an impairment must be both *reasonable and necessary* to serve a legitimate State interest. *United States Trust*, 431 U.S. at 25. And, as this Court held in *Spannaus*, 98 S.Ct. at 2723:

> The severity of the impairment measures the height of the hurdle the state legislature must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. *Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.*
>
> [emphasis added]

Appellees disingeniously characterize Florida's MRTA as a mere retroactive statute of limitation, traditionally upholdable on the rationale that such statutes *do not impair* existing contractual obligations, but merely alter the remedies.[7]

But even the Florida Supreme Court recognized that this is not a mere statute of limitation.[8] *Florida's MRTA destroys a vested fee simple interest and creates title out of thin air.* This is not merely alteration of remedy: it is an impairment, indeed a destruction, of an existing, vested right.

Reasonable retroactive statutes of limitation may be upheld, *but only because they do not* impair and destroy vested rights. *See Terry v. Anderson*, 95 U.S. 628.

> [A] state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.

Brinkerhoff-Faris, 281 U.S. at 681.

Contrary to Appellees' claim, Florida's MRTA is *not* a mere statute of limitation, and was not so treated below. It deprived the City of vested, fee simple

[7]*Terry v. Anderson*, 95 U.S. 628 (1877). The clear inadequacy of such an analysis was noted in *United States Trust*, 431 U.S. at 26, n. 17.

[8]*City of Miami*, 364 So.2d at 443.

ownership, retroactively and without notice. The City's contract right[9] was totally destroyed.

As a sweeping combination of curative, limitation, and recording legislation which validates void instruments and creates title out of thin air, Florida's MRTA can therefore only be justified by an economic emergency. *Spannaus*, 98 S.Ct. 2716. Appellees do not and cannot argue that there was an economic emergency here. St. Joe argues that Florida's MRTA is reasonable because the City was "negligent" in protecting its interest. Such an argument could obtain only had the City been on notice of a need to re-record its fee simple title. It was not.

But even if "reasonableness" were a correct standard, Florida's MRTA, which divests a fee-holder in favor of a stranger to the title with no valid claim, is not reasonable.

The State's interest in simplying title conveyancing does not require or justify divestiture in favor of a person with no valid claim, or a grantee whose title examination necessarily demonstrates he is receiving a wild deed. Unlike recording statutes, which resolve disputes in favor of purchasers who have relied on the public record, and curative statutes, which confirm legitimate contracts frustrated by technical defects, Florida's MRTA allows a putative grantee to *ignore* the fact, ascertainable from the public record, that his "chain of title" does not exist.

[9]*Fletcher v. Peck*, 10 U.S. 87 (1810).

This validation of wild deeds does not legitimately simplify title searches. Florida's MRTA purports to allow a grantee to rely on a thirty year record chain of title. However, after the Florida Supreme Court's decision here, such a search would *not negate the possible existence of a "marketable" wild deed*. On the other hand, if Florida's MRTA did *not* (as Constitutionally it must not) apply to a wild deed, a grantee could still rely on the existence of a record chain of title, which is traceable to the sovereign, and ignore restrictions or conditions which are more than thirty years old. As this Court stated in *United States Trust*, 431 U.S. at 25:

> A state is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well.

Taking

St. Joe completely fails to respond to the City's argument that Florida's MRTA violates the Federal Taking Clause. St. Joe's simplistic analysis posits that because Florida's MRTA has been found to "concern" the public welfare, it is Constitutional. Such an approach ignores the analytical frameworks this Court has developed to insure that the constitutional protections of property and contract rights do not become "dead letters".

The City was vested with full fee simple ownership of this land. The State has now divested the City, purportedly to simplify title searches. As this Court stated in *United States Trust*, 431 U.S. at 19, n. 16, even such constitutionally protected contract rights may be taken for a valid public purpose, but *compensation must be paid*.

Due Process

St. Joe, although it does not specifically respond to the City's Due Process arguments, argues that the City somehow had notice to protect itself and that Florida's MRTA is therefore a reasonable exercise of the State's police power. But the City did *not* have notice, and even the cases St. Joe cites recognize that a person may not be deprived of a property right without "some real opportunity to protect it." *Brinkerhoff-Faris*, 281 U.S. 673.

And even if the City did have notice of a need to re-record (which is not true), divesting a feeholder and allowing a putative grantee to ignore the public record, hardly "simplifies" title searches. And it is plainly not "reasonably necessary to promote the general welfare". *Spannaus*, 98 S.Ct. at 2731 (Brennan, J., dissenting).

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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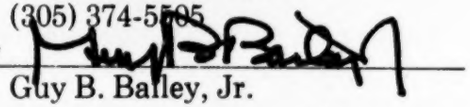
By 
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